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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/775,601	02/10/2004	Brent L. Hild	47097-01249USPT	1780

28763 7590 07/23/2009

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EXAMINER	
TAWFIK, SAMEH	

ART UNIT	PAPER NUMBER
3721	

NOTIFICATION DATE	DELIVERY MODE
07/23/2009	ELECTRONIC

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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 10/775,601
Filing Date: February 10, 2004
Appellant(s): HILD ET AL.

Peter Withstandley
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 05/19/2009 appealing from the Office action mailed 08/25/2008.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is substantially correct. The changes are as follows: as appellant has challenged the examiner's taking of Official Notice, references have been supplied to teach these features resulting in new grounds of rejection.

NEW GROUND(S) OF REJECTION

Claims 20-31, 33-41, 71, and 73 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Schrenk (U.S. Patent No. 3,589,958) in view of Chisholm (U.S. Patent No. 3,765,922) and further in view of Wood (U.S. Patent No. 4,849,040).

Claims 32, 42, 72, 74, 75, and 76 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Schrenk (U.S. Patent No. 3,589,958) in view of Chisholm (U.S. Patent No. 3,765,922) and further in view of Wood (U.S. Patent No. 4,849,040) and Laird (U.S. Patent No. 5,108,777).

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

3,589,958	Schrenk	06/1971
3,765,922	Chisholm	10/1973
4,849,040	Wood	07/1989
5.108,777	Laird	04/1992

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

NEW GROUND(S) OF REJECTION

Claims 20-31, 33-41, 71, and 73 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Schrenk (U.S. Patent No. 3,589,958) in view of Chisholm (U.S. Patent No. 3,765,922) and further in view of Wood (U.S. Patent No. 4,849,040).

Regarding claims 20-22: Schrenk discloses a blown film process for making a fiber reinforced film capable to be used of manufacturing fiber reinforced bag, comprising the steps of providing at least one thermoplastic resin (Fig. 1; via first extruder 11); melting the at least one thermoplastic resin (column 2, lines 10-12; via "heat plastified synthetic resinous thermoplastic material"); extruding the at least one thermoplastic resin through an extension die (via extruder 11) to form a film bubble; introducing a plurality of fibers inside of the film bubble (via filament reinforcing material 31); distributing the fibers inside of the film bubble (via through discharge opening 34); collapsing the film bubble after introducing the plurality of fibers so as to form a fiber-reinforced film (Fig. 1; via upper through rollers 47 and 48), the fiber-reinforced film having a first thermoplastic layer (via extruder 11), a second thermoplastic layer (via second extruder 12), and a plurality of fibers dispersed there-between, see for example (Fig. 1; via yarn of reinforcing material 31).

Schrenk does not disclose the steps of forming a first and a second body panel from the film; nor closing the first and second body panels along two opposing sides/ folding the film to form one of the opposing sides of the bag nor folding the web to form a bottom to form the bag. However, Wood discloses a similar device of forming a bag via folding and sealing thermoplastic film to shape the film into bags (Figs. 1-7).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified Schrenk's method of forming fiber web, to further have the steps of forming bag following the steps of forming the fiber web, as suggested by Wood, in order to come up with one machine capable of producing bags right after forming the web.

Schrenk does not disclose the step of providing the fiber in a pre cut shape nor the step of distributing the plurality of pre cut fibers in a "fluidized stream". However, Chisholm discloses a similar method with providing a plurality of pre cut fibers been distribute in a fluidized stream (Figs. 1 and 3; via 14' and 34'; via as distributing the fiber takes place with the help with the atmospheric air and/or air blown through head 33 within the tube, which could be considered as "fluidized stream").

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified Schrenk's by substituting the yarn of material 31 by pre cut fibers with distributing the fibers in a fluidized stream manner, as suggested by Chisholm, in order to easily control the desired thickness of the web (column 1, lines 55 and 56).

Regarding claim 23: Schrenk discloses that wherein the first and second body panels are respectively formed from two distinct portions of fiber reinforced film (via two different extruders 11 and 12).

Regarding claim 24: Schrenk discloses that wherein the at least one thermoplastic resin is selected from the group consisting of polyolefins, polyesters, nylons, alkenyl aromatic polymers, polyvinyl chlorides, and combinations thereof (column 1, lines 26-30).

Regarding claim 25: Schrenk discloses that the thermoplastic resin is a blend of thermoplastic resins (column 2, lines 10 and 12; via "synthetic resinous thermoplastic material").

Regarding claim 26: Schrenk does not specifically disclose that the thermoplastic resin comprises a blend of a polyolefin and a cyclic olefin copolymer. However, it would have been an obvious matter of design choice to blend a plyolefin and a cyclic olefin copolymer to form thermoplastic resin, since applicants have not disclosed that such the use of specific blend solves any stated problem or is for any particular purpose and it appears that the invention would perform equally well with Schrenk's thermoplastic resin.

Regarding claims 27-30: Schrenk disclose that the total thickness of the first and second thermoplastic layer is from about 0.2 mil to about 2.0 mil and/or about 0.4 mil to about 1.0 mil; and the thickness of the fiber reinforced film is from about 0.8 mil to about 2.0 mils and/or 1.0 mil to about 1.6 mils, (see for example Figs. 1, 3, and 4).

Regarding claim 31: Schrenk discloses that the extension die is an annular die (via die 14).

Regarding claims 33 and 34: Schrenk discloses that wherein the plurality of fibers contacts and adheres to an inner surface of the film bubble (Fig. 1; via the reinforced material been dispensed to the inner surface of the tube and been adhered to it).

Regarding claims 35 and 36: Schrenk discloses that wherein the extruding is performed using at least one horizontal/vertical extruder (Fig. 1; via extruders 11 and 12; one could be consider as horizontally oriented while the other broadly could be consider as vertically oriented).

Regarding claim 37: Schrenk discloses that wherein the plurality of fibers is a thermoplastic material (column 1, lines 28 and 29 “synthetic fibers”.

Regarding claims 38-41: Schrenk does not specifically disclose that the plurality of fibers is formed from at least two thermoplastic materials; from a polyolefin and a cyclic olefin copolymer; two layers; nor an additive to assist in adhering the plurality of fibers to an inner surface of the film bubble. However, it would have been an obvious matter of design choice to have the plurality of fibers been formed from at least two thermoplastic materials; from a polyolefin and a cyclic olefin copolymer; two layers; and having an additive to assist in adhering the plurality of fibers to an inner surface of the film bubble, since applicants have not disclosed that such specification solves any stated problem or is for any particular purpose and it appears that the invention would perform equally well with Schrenk’s fibers and the way it is been contacting the tube.

Regarding claims 71: Schrenk discloses that the first thermoplastic layer and the second thermoplastic layer are substantially not in contact, Fig. 1; via upper and lower surfaces of tube 16a substantially separated by the reinforcing material 31.

Regarding claim 73: Chisholm discloses the step of distributing the fibers between layers in a randomized patter, see for example Fig. 3.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified Schrenk's by substituting the yarn of material 31 by pre cut fibers with distributing the fibers in a fluidized stream manner in a randomized patter, as suggested by Chisholm, in order to easily control the desired thickness of the web (column 1, lines 55 and 56).

Claims 32, 42, 72, 74, 75, and 76 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Schrenk (U.S. Patent No. 3,589,958) in view of Chisholm (U.S. Patent No. 3,765,922) and further in view of Wood (U.S. Patent No. 4,849,040) and Laird (U.S. Patent No. 5,108,777).

Regarding claims 32, 42, and 75-76: the applied arts do not disclose the claimed step of providing fibers with an electrical charge. However, Laird discloses the use of electrically charged fiber (column 1, lines 16-20 "direct current electrostatic flocking and alternating current electrostatic flocking.").

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have substituted Schrenk's fiber by electrically

charged fiber, as suggested by Laird, in order to achieve an easy and strong contact of the fiber to the tube.

Regarding claim 72: Schrenk discloses that the first thermoplastic layer and the second thermoplastic layer are substantially not in contact, Fig. 1; via upper and lower surfaces of tube 16a substantially separated by the reinforcing material 31.

Regarding claim 74: Chisholm discloses the step of distributing the fibers between layers in a randomized patter, see for example Fig. 3.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified Schrenk's by substituting the yarn of material 31 by pre cut fibers with distributing the fibers in a fluidized stream manner in a randomized patter, as suggested by Chisholm, in order to easily control the desired thickness of the web (column 1, lines 55 and 56).

(10) Response to Argument

A. Examiner interpretation of the independent claims

During patent examination of the claims, the pending claims must be given their broadest reasonable interpretation consistent with the specification. Phillips v. AWH Corp., 415 F.3d 1303, 75 USPQ2d 1321 (Fed. Cir. 2005). See also MPEP 2111. Moreover, while the claims of issued patents are interpreted in light of the specification, prosecution history, prior art and other claims, this is not the mode of claim interpretation to be applied during examination. During examination, the claims must be interpreted as broadly as their terms reasonably allow. In re Am. Acad. of Sci. Tech

Ctr., 367 F.3d 1359, 1369, 70 USPQ2d 1827, 1834 (Fed. Cir. 2004). See also MPEP 2111.01.

Independent claims 20 and 42 recites:

A blown-film process for making a fiber-reinforced bag comprising the steps of providing one thermoplastic resin; melting the thermoplastic resin; providing a plurality of pre-cut fibers; distributing the pre-cut fibers in a fluidized stream; collapsing the film after distributing the pre-cut fibers; forming and closing body panels of the film to form fiber bag.

B. The rejection of claims 20-42 and 71-76 under 35 U.S.C. 103(a) is proper and should be affirmed.

Appellants argue in pages 11-18 of the filed brief that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988)and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the applied art of Schrenk '958 clearly discloses method of preparation of reinforced plastic sheet with the insertion of *yarn of fiber between the films*, which is very close and related to the claimed "blown-film process for making a fiber-reinforced bag". '958 missed showing the step of "providing a plurality of pre-cut fibers". Such a step of "providing a plurality of pre-cut fibers" was disclosed in the secondary applied reference of Chisholm '922 (Figs. 1 and 3). *The secondary reference '922 was only provided to*

show the step of contributing "pre-cut fibers". The examiner submits that the combined teachings of Schrenk and Chisholm make obvious the claimed invention.

Note, '958 discloses the steps of forming reinforced plastic sheet by inserting yarn of fiber in an extruded tube by the trapped bubble process then collapsing the bubble and sealing opposed surface together (column 1, lines 13-19), that makes it obvious to those skill in the art such formed reinforced plastic sheet would be used to form bulk/heavy duty plastic bags.

Appellants further argue that the applied arts do not disclose the claimed distribution of the fiber in a "fluidized" way. The examiner agrees that the applied art of '958 does not disclose the distribution of fibers in "fluidized" way, but '922 discloses the use and help of air to distribute the fiber around and over the tube, which is equivalent to the claimed "fluidized stream", see for example (Fig. 3; via the very far left of the figure shows Air blown in to the tube). The examiner submits that the combined teachings of Schrenk and Chisholm make obvious the claimed "fluidized stream".

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

This examiner's answer contains a new ground of rejection set forth in section **(9)** above. Accordingly, appellant must within **TWO MONTHS** from the date of this answer

exercise one of the following two options to avoid *sua sponte* **dismissal of the appeal** as to the claims subject to the new ground of rejection:

(1) **Reopen prosecution.** Request that prosecution be reopened before the primary examiner by filing a reply under 37 CFR 1.111 with or without amendment, affidavit or other evidence. Any amendment, affidavit or other evidence must be relevant to the new grounds of rejection. A request that complies with 37 CFR 41.39(b)(1) will be entered and considered. Any request that prosecution be reopened will be treated as a request to withdraw the appeal.

(2) **Maintain appeal.** Request that the appeal be maintained by filing a reply brief as set forth in 37 CFR 41.41. Such a reply brief must address each new ground of rejection as set forth in 37 CFR 41.37(c)(1)(vii) and should be in compliance with the other requirements of 37 CFR 41.37(c). If a reply brief filed pursuant to 37 CFR 41.39(b)(2) is accompanied by any amendment, affidavit or other evidence, it shall be treated as a request that prosecution be reopened before the primary examiner under 37 CFR 41.39(b)(1).

Extensions of time under 37 CFR 1.136(a) are not applicable to the TWO MONTH time period set forth above. See 37 CFR 1.136(b) for extensions of time to reply for patent applications and 37 CFR 1.550(c) for extensions of time to reply for ex parte reexamination proceedings.

Respectfully submitted,

/Sameh H. Tawfik/
Primary Examiner, Art Unit 3721

A Technology Center Director or designee must personally approve the new ground(s) of rejection set forth in section (9) above by signing below:

/KAREN M. YOUNG/

Karen M. Young

Director, Technology Center 3700

Conferees:

/Nathan J. Newhouse/

Supervisory Patent Examiner, Art Unit 3782

/Anthony Stashick/

Supervisory Patent Examiner, Art Unit 3781